

**FILED**  
DISTRICT COURT OF GUAM

APR 28 2005

MARY L.M. MORAN  
CLERK OF COURT

41

DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

LUIS A. DEVERA,  
Plaintiff,  
v.  
DOLORES GARCIA, et al.,  
Defendants.

CV 04-00026

ORDER DENYING  
PLAINTIFF'S MOTION FOR  
RECONSIDERATION OF THE  
COURT'S MARCH 8, 2005  
ORDER

On March 31, 2005 Plaintiff Luis Devera ("Plaintiff") brought a Motion for Reconsideration of the Court's March 8, 2005 Order. Defendants Dolores Garcia ("Garcia") and GovGuam Association of Retired Persons, Inc. ("GGARP") filed an Opposition on April 8, 2005. On April 11, 2005, Plaintiff filed a Reply. No hearing date was set for this

1 motion. Pursuant to Guam Local Rule 7.1(e)(1) the Court  
2 issues a ruling on the papers. Having considered all papers  
3 and argument submitted, **THE COURT NOW FINDS AND RULES AS**  
4 **FOLLOWS:**

5  
6 **I. INTRODUCTION**

7 Plaintiff brings this motion for reconsideration,  
8 claiming that the Court failed to consider certain material  
9 facts in making its decision to grant summary judgment for  
10 Defendants Garcia and GGARP on the basis that they are not  
11 stat actors who can be liable under Section 1983 for  
12 violations of constitutional rights.

13  
14 **II. DISCUSSION**

15 **A. Legal Standard: Motion for Reconsideration**

16 Guam Local Rule 7.1(i) states that a motion for  
17 reconsideration of the decision on any motion may be made  
18 only on the grounds of: (1) a material difference in fact or  
19 law from that presented to the Court before such decision in  
20 the exercise of reasonable diligence could not have been  
21 known to the party moving for reconsideration at the time of  
22 such decision; or (2) the emergence of new material facts or  
23 a change of law; or (3) a manifest showing of failure to  
24 consider material facts presented to the Court before such  
25 decision. GU L.R. 7.1(i).

26 Federal Rule of Civil Procedure 54(b) also allows a

1 court to reconsider an order at any time prior to the entry  
2 of final judgment. This authority was articulated by the  
3 Ninth Circuit in Balla v. Idaho State Board of Corrections  
4 869 F.2d 461 (9<sup>th</sup> Cir. 1989). In Balla, the Court found  
5 that:

6 Courts have inherent power to modify their  
7 interlocutory orders before entering a final  
8 judgment. (Citation omitted). In addition, the  
9 Federal Rules of Civil Procedure explicitly grant  
10 courts the authority to modify their interlocutory  
11 orders. See Fed. R. Civ. P. 54(b) (any order which is  
12 not certified under Rule 54(b)

### 13 **B. Analysis**

14 Although Plaintiff does not initially bring this motion  
15 pursuant to any rules, in his Reply Plaintiff asserts that  
16 the basis for reconsideration is that the Court failed to  
17 consider certain material facts in making its decision.

18 Plaintiff brings this motion on five grounds: (1) the  
19 recital of facts was inaccurate; (2) the acts of the  
20 Defendants in calling and asking the police to stop the  
21 peaceful meeting and arrest the Plaintiff is clearly a  
22 "state action;" (3) the subsequent brutal treatment of the  
23 Plaintiff by the Guam police is the direct consequence of  
24 constitutional violations by the Defendants; (4) the  
25 principle of conspiracy must and should be applied in this  
26 case is such that the act of one is the act of all; and (5)

1 the Defendants did not just make a phone call to the police  
2 but made a false complaint that Plaintiff was committing  
3 disorderly conduct at the Center and asked the police  
4 officers (other Defendants) to stop the peaceful meeting and  
5 arrest him.

6 In support of such argument, Plaintiff lists seven  
7 facts, which he contends were disregarded by the Court.  
8 They are as follows:

- 9 1. Plaintiff is not just a member of the Dededo  
10 Senior Center but the duly elected Vice  
11 President.
- 12 2. The concerns about the control and custody of  
13 senior funds is not just the Plaintiff's  
14 concern, but those of the entire membership of  
15 the Center who signed the Unnumbered  
16 Resolution, Ex. 6.
- 17 3. The meeting of March 12, 2004 was solely about  
18 Exhibit 6 and not for birthday celebrations as  
19 falsely described by Defendant Dolores Garcia.
- 20 4. The said meeting was peaceful and orderly, as  
21 attested to by Rosario Dizon, Dededo Senior  
22 Council President, Lucila Morton, former  
23 treasurer, Nicomedes Andrada and Felipe  
24 Caguioa, peace officers and six other seniors  
25 (Exs. 6, 7, 8, 9.) Hence, there was absolutely  
26 no reason or justification for the Defendants

1 to call the police and have the Plaintiff  
2 arrested while exercising his constitutional  
3 rights.

4 5. Garcia, in her own handwriting, stated in the  
5 GovGuam Association of Retired Persons Incident  
6 Report Form regarding the incident of March 12,  
7 2004 that she, after consulting with her  
8 superiors, called the police to stop and arrest  
9 the Plaintiff.

10 6. The Service Contract between the defendant  
11 GGARP and the DPHSS specifically and expressly  
12 provides under -

13 "SPECIAL TERMS AND CONDITIONS -

14 b. The proposer agrees to accept  
15 appointment as Service Provider to the  
16 DPHSS, providing its best efforts in its  
17 performance of duties in a responsible  
18 manner, in accordance with all applicable  
19 laws, rules, regulations and policies of  
20 both the United States Government [and]  
21 Government of Guam."

22 (Contract, p. 34.)

23 The contract further expressly allows the  
24 seniors to meet at least once a month to  
25 discuss Center activities, problems or  
26 concerns, and solutions.

1           7.           The statement of the Plaintiff that he did not  
2                       see Defendant Garcia when the police arrived at  
3                       the Center could not, in no way, negate the  
4                       fact that the Defendant asked the police to  
5                       arrest the Plaintiff.

6           The Court finds, however, that these facts have no  
7           bearing on the summary judgment motion at issue. In  
8           granting the motion for summary judgment as to Defendants  
9           GGARP and Garcia, the Court found that there was no state  
10          action, as Defendants Garcia and GGARP were private actors.  
11          These facts, even if new which arguably they are not, do not  
12          change the fact that state action does not exist as to these  
13          two Defendants.

14          As previously articulated in the Court's March 8, 2005  
15          Order, despite government funding, the contract between  
16          GGARP and DPHSS, and Defendant Garcia's phone call to the  
17          police, state action does not exist here. The Court also  
18          found that there is no nexus to the state, no compulsion by  
19          the state, no joint action with the state, and that the  
20          GGARP is not performing a function traditionally and  
21          exclusively performed by the state. Since these facts do  
22          not alter the application of constitutional law, they are  
23          not material to the Court's decision.

24          Here, facts such as: (1) Devera is not merely a member  
25          of the Center but its Vice President; (2) the concerns over  
26          custody of the Center are not just Devera's but those of the

1 entire Center membership; (3) the March 12, 2004 meeting was  
2 only about fund custody, not birthday celebrations; (4) the  
3 meeting was peaceful; and (5) the Defendants did not just  
4 make a phone call, but made a false complaint have no  
5 constitutional significance to a state action determination.

6 Plaintiff's only argument directed at a finding of  
7 state action is his statement that "the acts of the  
8 Defendants in calling and asking the police to stop the  
9 peaceful meeting and arrest the Plaintiff is clearly a  
10 'state action.'" However, the Court already held in its  
11 March 8, 2005 Order, that a mere phone call to the police  
12 for assistance without more does not create state action  
13 under the joint action test, as it is insufficient to create  
14 a conspiracy for a Section 1983 claim.

15 Plaintiff offers no new facts to suggest that by making  
16 the phone call, Defendants Garcia and the GGARP had control  
17 of the police officers decision to arrest. This is the same  
18 argument previously made by Plaintiff, which the Court found  
19 does not constitute state action under Ninth Circuit case  
20 law. Accordingly, the Court's finding that there is no  
21 state action still stands.

22 //

23 //

24 //

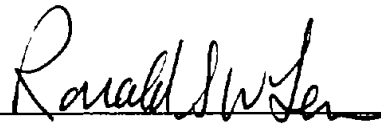
25 //

26 //

1 **IV. CONCLUSION**

2 Because the Plaintiff fails to make a manifest showing  
3 of the Court's failure to consider material facts presented  
4 to the Court before issuing the March 8, 2005 Order, the  
5 Court **DENIES** Plaintiff's Motion for Reconsideration.

6 **IT IS SO ORDERED.**

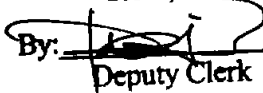
7  
8  
9  
10 

11 **RONALD S.W. LEW<sup>1</sup>**  
12 Designated District Judge

13 DATED: April 27, 2005

14  
15  
16  
17  
18  
19 Notice is hereby given that this document was  
20 entered on the docket on APR 28 2005.  
No separate notice of entry on the docket will  
be issued by this Court.

21 Mary L. M. Moran  
22 Clerk, District Court of Guam

23 By:  Deputy Clerk  
24 APR 28 2005  
25 Date

26 <sup>1</sup> The Honorable Ronald S.W. Lew, United States District Judge  
for the Central District of California, sitting by designation.